

Minority shareholder rights

The following is a summary of the rights of minority shareholders in the Swiss company DDM Holding AG (“DDM” or the “Company”) based upon current Swiss and Swedish legislation and the Company’s current Articles of Association. The below descriptions of minority shareholder rights in Sweden are of a general nature and are included only for comparative purposes. The summary does not claim to give an exhaustive account of the corporate documents mentioned above, nor of all potentially relevant differences between Swiss and Swedish law or corporate governance requirements.

1. General

1.1 Equal treatment

Swiss law

Pursuant to article 717 para 2 of the Swiss Code of Obligations, the members of the Board of Directors and third parties engaged in managing the Company’s business must afford the shareholders equal treatment in like circumstances.

Swedish law

The right of equal treatment entails that neither a general meeting, the Board of Directors nor any other representative may pass a resolution, which is likely to give an undue advantage to a shareholder or another person to the detriment of the Company or other shareholders.

1.2 Supermajority requirements

Swiss law

Under article 704 para 1 of the Swiss Code of Obligations, a resolution passed at a shareholders’ meeting with a super-majority of at least two-thirds of the votes represented and the absolute majority of the nominal share capital represented at such meeting (qualifizierte Mehrheit) is required for: (i) changes in a Company’s purpose; (ii) the creation of shares with privileged voting rights (Stimmrechtsaktien); (iii) restrictions on the transferability of registered shares; (iv) an authorised or conditional increase in a Company’s share capital; (v) an increase in a Company’s share capital by way of capitalisation from reserves, against contribution in kind (Sacheinlage), for the acquisition of assets (Sachübernahme) or involving the grant of special privileges; (vi) the restriction or elimination of pre-emptive rights (Bezugsrechte) of shareholders, (vii) a relocation of the registered seat or (viii) the dissolution to the Company.

The same voting requirements apply to resolutions in relation to transactions among corporations based on the Swiss Merger Act, including a merge, demerger or conversion of a corporation (other than a cash-out or certain squeeze out mergers, in which minority shareholders of the Company being acquired may be compensated in through cash or securities of a parent Company – in such a merger, an affirmative vote of 90 per cent of the outstanding shares is required). Swiss law may also impose this supermajority voting requirement in connection with the sale of “all or substantially all of its assets” by the Company.

Swedish law

Under Chapter 7, Section 40 of the Swedish Companies Act, a resolution passed by the general meeting requires a supermajority of at least two-thirds of the votes cast and shares represented at the general meeting for e.g. (i) amendment of the articles of association, (ii) issuances of shares, warrants convertible bonds on a non-pre-emptive basis, (iii) acquisition of the company’s own shares and (iv) reduction of the share capital and the statutory reserve. The aforementioned voting requirements apply also to resolutions in relation to mergers and demergers.

Certain resolutions to amend the articles of association will, however, require that all shareholders present at the meeting supports the resolution, and provided that the shareholders represent not less than nine-tenths of all shares in the company. For example, resolutions that entails: (i) reduction of the shareholders' rights to the company's profits or other assets through a provision pursuant to Chapter 3, Section 3, (ii) restrictions on the right to transfer or acquire shares in the company through a clause pursuant to Chapter 4, Sections 8, 18 or 27, and (iii) changes in the legal relationship between shares.

2. Specific minority shareholders' regulations

2.1 Extraordinary general meeting

Swiss law

Under article 699 para 3 of the Swiss Code of Obligations, the Board of Directors is required to convene an extraordinary shareholders' meeting of the Company if so resolved by a shareholders' meeting or if so requested by holders of shares holding in aggregate at least 10 per cent of the nominal share capital of the Company. Shareholders holding shares with a nominal value of CHF 1 million or 10 per cent of the nominal share capital have the right to request that a specific proposal be discussed and voted upon at the next shareholders' meeting. A shareholders' meeting is convened at least 20 days prior to such meeting.

Swedish law

Under Chapter 7, Section 13 of the Swedish Companies Act, the Board of Directors shall convene an extraordinary general meeting where an auditor of the company or owners of not less than one-tenth of all shares in the company demand in writing that such a meeting be convened to address a specified matter. Shareholders representing at least one-tenth of the votes in the company may adjourn a resolution on adoption of the annual report, disposition of profits or discharge from liability to a resumed general meeting. Under the Swedish Companies Act, notices to attend a general meeting shall be issued, as a general, not earlier than six weeks and not later than two weeks prior to the general meeting.

2.2 Minority shareholders' auditor

Swiss law

No similar right exists under Swiss law. However under article 727b of the Swiss Code of Obligations publicly traded Companies must appoint as an auditor an audit firm under state oversight in terms of the Auditor Oversight Act. They must also arrange for audits that must be carried out in terms of the statutory provisions by a licensed auditor or a licensed audit expert to be carried out by a state supervised audit company.

Swedish law

Under the Swedish Companies Act, Chapter 9, Section 9, a shareholder may propose that an auditor appointed by the Swedish Companies Registration Office shall participate in the audit together with other auditors. The proposal shall be submitted to a general meeting at which the election of auditors is to take place or at which a proposal set forth in the notice to attend the general meeting is to be addressed. Where the proposal is supported by owners of at least one-tenth of all shares in the Company or at least one-third of the shares represented at the meeting, and any shareholder so requests from the Swedish Companies Registration Office, the Swedish Companies Registration Office shall appoint an auditor.

2.3 Requirements for a special audit

Swiss law

The books and correspondence of a Swiss Company may be with the express authorization of the shareholders or by resolution of the Board of Directors and subject to the safeguarding of the Company's business secrets. At a general meeting of shareholders, any shareholder is entitled to request information from the Board of Directors concerning the affairs of the Company. Shareholders may also ask the auditor questions regarding its audit of the Company. The Board of Directors and the auditor must answer shareholders' questions to the extent necessary for the exercise of shareholders' right and subject to prevailing business secrets or other material interests of the Company. If shareholders' inspection and information rights have been exercised and prove to be insufficient, any shareholder may propose to the shareholders that specific facts be examined by a special commissioner in a special investigation. If the shareholders approve the proposal, the Company or any shareholder may, within 30 calendar days after a general meeting of shareholders, request the court to appoint a special commissioner. If the shareholders reject the request, one or more shareholders representing at least 10 per cent of the share capital or holders of shares in an aggregate par value of at least two million Swiss francs may request the court to appoint a special commissioner.

Swedish law

Under the Swedish Companies Act, Chapter 10 (Sections 22-23), a shareholder may submit a proposal for an examination through a special examiner. Such a proposal shall be submitted at an ordinary general meeting or at the general meeting at which such matter is to be addressed pursuant to the notice to attend the general meeting. Where the proposal is supported by owners of at least one-tenth of all shares in the Company or at least one-third of the shares represented at the general meeting, the Swedish Companies Registration Office shall, upon request by a shareholder, appoint one or more special examiners. The examination may relate to the Company's management and accounts during a specific period of time in the past or certain measures or circumstances within the Company.

The special examiner shall submit a report regarding the examination. The report shall be made available and sent to the shareholders and shall be presented at a general meeting.

2.4 Distribution of profits

Swiss law

Under article 698 para 2 sec. 4 of the Swiss Code of Obligations the general meeting shall approve the annual accounts and resolutions on the allocation of the disposable profit, and in particular to set the dividend and the shares of profits paid to board members.

Swedish law

Distribution of profits is covered by Chapter 18 of the Swedish Companies Act. Under Section 11 of that Chapter, upon request by shareholders holding more than ten per cent of all shares, the annual general meeting shall resolve upon the distribution of one-half of the remaining profit for the year pursuant to the adopted balance sheet, after deductions made for (i) losses carried forward that exceed unrestricted reserves, (ii) amounts which, by law or the articles of association, must be transferred to restricted equity and (iii) amounts which, pursuant to the articles of association, shall be used for any purpose other than distribution to the shareholders. The general meeting is not obliged to resolve upon a distribution in excess of five per cent of the company's shareholders' equity. Notwithstanding, the distribution may not occur where, after the transfer, there is insufficient coverage for the Company's restricted equity.

2.5 Mandatory redemption of shares

Swiss law

Article 33 of the Swiss Act on Stock Exchanges and Securities Trading provides an offeror with the right to squeeze-out the remaining minority shareholders of the target Company after a public tender offer resulting in the holding of more than 98 per cent of the voting rights in the target Company.

The Swiss Merger Act provides in article 8 para 2 for the possibility of a so-called "cash-out" or "squeeze out" merger if the acquirer controls 90 per cent of the outstanding shares entitled to vote at a general meeting. In such limited circumstances, minority shareholders of the Company being acquired may be compensated in a form other than through shares of the acquiring company (for instance, through cash or securities of a parent company of the acquiring company or of another company).

Swedish law

Under the Swedish Companies Act a shareholder who holds more than nine-tenths of the shares in a Company is entitled to redeem (buy out) the remaining shares of the other shareholders. This right is reciprocal in the sense that any minority shareholder whose shares may be redeemed is entitled to request the majority shareholder to redeem its shares.

2.6 Mergers and other similar transactions

Swiss law

The shareholders of an acquired company have a fundamental right to become shareholders in the acquiring company. Their participation and membership rights in the acquiring company should reflect the assets and liabilities of the involved companies, as well as the voting rights and all other relevant facts relating to the rights of the shares of the acquired company. The merger agreement can in any case provide for the option of a distribution of cash or other compensation, or even for a compulsory compensation, in lieu of a distribution of shares in the acquiring company to the shareholders of the acquired company. Compulsory compensation requires a resolution approving the merger which is supported by 90 per cent of the voting rights of the shareholders of the acquired company. A specially qualified auditor (besonders befähigter Revisor) is to review the merger agreement, the merger report established by the ultimate management bodies and the financial statements. The shareholders' meetings of the involved companies must approve the merger.

Swedish law

Under the Swedish Companies Act, mergers are covered by Chapter 23. A merger plan is to be prepared and presented to the general meeting. The merger plans shall be reviewed by one or more authorised or approved auditors in respect of each of the transferor companies and, in the event of absorption, the transferee company. The review shall be as comprehensive and thorough as required by generally-accepted auditing standards. The merger consideration to the shareholders of the transferor company or companies (merger consideration) shall consist of shares in the transferee company or of cash. More than half of the total value of the consideration shall consist of shares.

A resolution by a general meeting to approve the merger plan shall be valid only where supported by shareholders holding not less than two-thirds of both the votes cast and the shares represented at the meeting.

Similar rules apply to demergers, which are covered by Chapter 24 of the Swedish Companies Act.

2.7 Liquidations

Swiss law

Under article 736 sec. 4 of the Swiss Code of Obligations the Company is dissolved by court judgment if shareholders together representing at least ten per cent of the share capital request its dissolution for good cause. The court may order a different solution if appropriate and reasonable for the interested parties.

Swedish law

Where a majority shareholder, through abuse of his or her influence over the Company, has intentionally participated in a violation of the Swedish Companies Act, the applicable annual reports legislation or the Company's articles of association, a court of general jurisdiction may, on petition by the shareholders representing at least one-tenth of all shares, order that the Company go into liquidation, provided that special cause exists therefor as a consequence of the long duration of the abuse or some other reason.

2.8 Claims regarding damage to the Company

Swiss law

Swiss law does not permit a company to exempt any member of its Board of Directors from any liability for damages suffered by the company, the shareholders or the Company's creditors caused by intentional or negligent violation of that director's duties. However, the shareholders may pass a resolution discharging the members of the Board of Directors from liability for certain limited actions. Such release is effective only for facts that have been disclosed to the shareholders and only vis-à-vis the Company and those shareholders who have consented to the resolution or who acquired shares subsequently with knowledge of the resolution. The right to claim damages on behalf of the Company for shareholders who do not consent to the release expires six months after the shareholders pass a resolution approving the release.

Swedish law

Under Chapter 29 of the Swedish Companies Act, claims regarding damage to the Company may be brought where the majority or a minority consisting of shareholders representing at least one-tenth of all shares in the Company have, at a general meeting, supported a resolution to bring such a claim in damages or, with respect to a member of the Board of Directors or the managing director, have voted against a resolution regarding discharge from liability.

2.9 Public takeovers

Swiss law

The Federal Act on Stock Exchanges and Securities Trading (SESTA) regulates public takeovers irrespective of the consideration for Swiss resident Companies with at least one class of equity security listed on a Swiss stock exchange. As the Company is not listed on a Swiss stock exchange, SESTA is not applicable (article 2 lit. e SESTA).

Swedish law

In Sweden public takeovers, and minority shareholders' rights in relation thereto, as regards Swedish limited companies, whose shares are traded on multilateral trading facilities are governed by the Swedish Corporate Governance Board's Takeover Rules for Certain Trading Platforms. The Stock Markets Takeover Bids Act governs takeovers of shares that are admitted to trading on a regulated market. Since the Company's shares are listed on Nasdaq OMX First North, which is not a regulated market, the Stock Markets Takeover Bids Act is not applicable.